

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 7-8-2019****Pronounced on 13-8-2019****CRIMINAL APPEAL 889/2003**

(Arising out of judgment of conviction and order of sentence dated 29-7-2003 passed by 4th Addl. Sessions Judge Durg (CG) in Sessions Trial No. 298/2002)

Dinoo Ram Kanwat son of Leelar Singh, aged about 20 years, unemployed, R/o. Village Gunderdehi, P.S. Gunderdehi, Distt. Durg (CG)

Appellant**VERSUS**

State of Chhattisgarh through Station House In-charge, Police Station Gunderdehi, Distt. Durg (CG)

For appellant	: Mr. V.G. Tamaskar, Adv..
For respondent/State	: Mr. H.S. Ahluwalia, Dy. Adv. General.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 29-7-2003 passed by 4th Addl. Sessions Judge Durg (CG) in Sessions Trial No. 298/2002 whereby and whereunder he convicted and sentenced the appellant as under:-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
450, IPC	2 years	200/-	SI for 3 months
506, IPC	6 months	-	-
376, IPC	7 Years	200/-	SI for 3 months

All the jail sentences are directed to run concurrently.

2. In brief the prosecution story is that on 20-8-2002 prosecutrix was about 18 years old. She was resident of village Gunderdehi. On 20-8-2002, prosecutrix was alone in her house. Her parents had gone out for job. At about 11.00 am appellant entered into her house, closed the doors, committed sexual intercourse with her. When she tried to shout he pressed her mouth. He threatened her if she will narrate the incident then he will kill her. When her parents returned back she narrated the

incident to them. On the very day, at about 19.00 hours she went to police station Gunderdehi and lodged an FIR against him. After completion of investigation, a charge sheet was filed against him under Sections 376, 450, 506 of Indian Penal Code (in brief, 'IPC'). Trial Court framed charge against him under Sections 376, 450 and 506 of IPC. He abjured the charge and faced trial. To bring home the charges the prosecution examined 6 witnesses in all, he examined 4 witnesses on his defense. After completion of trial, trial Court convicted and sentenced him as aforesaid.

3. Being aggrieved the appellant has preferred this criminal appeal.
4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. There are material omissions and contradictions in statements of prosecution witnesses. The prosecutrix was a consenting party in alleged sexual intercourse. Thus, the conviction and sentences of the appellant are bad in eyes of law. Hence, he may be acquitted of the aforesaid charges.
5. Counsel for the State argued that the conviction and sentences of the appellant are based on clinching evidence led by the prosecution. The conviction and sentences of the appellant do not call for any interference by this Court.
6. Trial Court has given the finding that at the time of the alleged incident prosecutrix was 18 years old.
7. As per the alleged M.L.C. report Ex. P-4, P.W.-4 Dr. Renuka Prasanna had examined prosecutrix and on external examination she found multiple scratch marks over both thighs and face caused by nails. In internal examination she found that her hymen was ruptured completely, reddishness was present on vaginal mucosa, red mucous was secreting from her vagina. She opined that aforesaid injuries were caused between 12 to 24 hours back.
8. There is no such evidence on record on strength of which it can be said that Ex.P. 4 is not believable, thus this court believes on Ex. P.4.
9. P.W.1 prosecutrix says in para No. 1 of her statement given on oath that appellant had entered into her house, closed the doors, threatened to kill her if she shouts, committed sexual intercourse with her.
10. P.W. 2 Shankar who is father of the prosecutrix says in para 2 of

his statement given on oath that when he returned back, prosecutrix told that one person raped her.

11. P.W. 3 Bitanbai who is mother of the prosecutrix says in para 1 and 2 of her statement given on oath that when she returned back, prosecutrix told that one person entered into the house, closed the doors, pressed her mouth and committed rape with her, gave threats to kill her.

12. D.W. 1 Sukhram says in para No. 2, D.W.2 Bhuwanlal Patel, the then Patel of village Gunderdehi, D.W. 3 Hemant Das, the then village Kotwar of Gunderdehi and D.W. 4 Bhagbali, the then Kotwar of village Gunderdehi say in para 1 of their statements given on oath that prosecutrix had not told that allegedly rape was committed with her.

13. Counsel for the appellant placed reliance in the judgment of co-ordinate Bench of this Court passed in the matter of **Natwar Dewangan vs. State of Chhattisgarh**, 2006 Cri. L.J. 2046 wherein it was observed that doctor who examined prosecutrix stated that no injury was found on person or on her private parts, her bangles were also not broken during sexual assault, two eyewitnesses saw her and accused in compromising situation, FIR was delayed by 10 days, no satisfactory explanation was given for delay, in these circumstances there is possibility that sexual assault by accused on her was with her consent.

14. Counsel for the appellant placed reliance in the judgment of Hon'ble Supreme Court in the matter of **State of Chhattisgarh vs. Lekhram**, 2006 Cri. L.J. 2139 wherein it was observed that considering facts and circumstances of the case, and having regard to fact that prosecutrix lived for sometime with accused in rented house, she was a consenting party.

15. Counsel for the appellant placed reliance in the judgment of Hon'ble Supreme Court passed in the matter of **Mohammad Ali @ Guddu vs. State of U.P.**, 2015 Cri. L.J. 1967 wherein no explanation was offered for lodging the FIR delayed by 11 days, testimony of the prosecutrix that she was taken from one place to other place and remained at various houses for almost two months, she gave explanation that she was threatened, medical evidence showing that there are no injuries on private parts, it was observed that testimony of prosecutrix does not inspire confidence.

16. Hon'ble Supreme Court in the matter of **Munna -v- Sate of M.P.** [(2014) 10 SCC 254] observed in para 11 which is relevant and quoted below :-

“11. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecutrix in view of the statutory presumption under Section 114-A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376 IPC has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving benefit of doubt to the accused.”

17. Hon'ble Supreme Court in the matter of **Radhu Vs. State of M.P.** [(2007)12, SCC 57], laid down following judicial precedent :-

“A finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix and her testimony should not be rejected on the basis of minor discrepancies and contradictions. Absence of injuries on the private parts of the victim will not by itself falsified the case of rape, nor can be construed as evidence of consent nor the opinion of a doctor that there was no evidence of any sexual intercourse or rape, sufficient to disbelieve the victim. However courts should , at the same time, bear in mind that false charges of rape are not uncommon, and there are some rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

18. Hon'ble Supreme Court in the matter of **Raju and others -v- State of MP** [(2009) 3 SCC(Cri) 751)], held that testimony of the prosecutrix is believable on a par with that of an injured witness, her testimony cannot always be presumed to be gospel truth. Possibility of exaggeration or embellishment or false implication where several persons are accused cannot be ruled out. Possibility of immoral past of

prosecutrix based on evidence can be considered.

19. In the matter of **Mohd. Ali -v- State of UP** [2015 (7) SCC 272], Hon'ble Supreme Court observed in para 30 as under :-

“30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony.”

20. PW-1 prosecutrix says in para No. 5 during her cross-examination that she does not know the name of appellant.

21. In the case in hand in alleged FIR Ex. P-1 and alleged statement of prosecutrix recorded under Section 161 Cr.P.C. Ex. D.1, the name of culprit has mentioned as Deenu Ram.

22. PW-1 prosecutrix says in para No. 5 that appellant is from her village. There is no such evidence on record on strength of which it can be said that this statement of PW-1 prosecutrix is not believable. Thus this Court believes this statement of PW-1 prosecutrix. Thus in these circumstances this Court finds that appellant does not get any help from the aforesaid statement of para 5 of PW-1 prosecutrix. Thus this Court is not impressed from the argument raised by counsel for appellant, regarding this aspect.

23. P.W.-1 prosecutrix says in para No. 5, P.W.2 Shankar, who is father of prosecutrix says in para No. 4 that the houses of Anand and Madan are beside their house. Near their house, houses of Raju, Panchhu and Baratu are situated. D.W.1 Sukhram says in para No. 2 that if someone will shout from the house of P.W.2 Shankar, it would be heard in his house. Near the spot way is for the pond, people come and go through that way since morning to till 10 p.m. D.W.3 Hemant Das says in para No. 1 of his statement given on oath that near the house of prosecutrix houses of Sukhram and Anand are situated. Near the spot way is for pond, people frequently come and go from that way. These circumstances are not sufficient to say that aforesaid statements of para No.1 of prosecutrix, para No. 2 of P.W.2 Shankar, para No.1 of

P.W.3 Smt. Bitan Bai are improbable. Thus this Court disallowed the argument of the counsel of appellant in this regard.

24. P.W.1 prosecutrix says in para No. 7 that she had scratched the body of the appellant by her nails. As per the prosecution story at the time of examination of appellant by doctor no injury was found on the body of the appellant. These circumstances are not sufficient to say that prosecutrix was allegedly 'consenting party' thus this Court reject the argument of counsel of appellant in the reference.

25. There are the omissions in Ex. P.1 and Ex. D.1 that allegedly appellant had thrown her on the earth, she was eating meals. There is the contradiction in Ex. P.1, Ex. D.1 and between the statement of P.W.1 prosecutrix that allegedly appellant had laid down her on the cot. These omissions and contradictions are not important and do not affect the testimony of para 2 of P.W. 1 prosecutrix. Thus this Court disallows the argument put-forth by counsel for the appellant in this regard.

26. P.W.4 Dr. Renuka Prasanna says in para No. 5 during her cross-examination that she had not found any lacerated wound on the hymen of prosecutrix. But looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Radhu (supra)**, this Court finds that the absence of injuries on the private parts of prosecutrix will not falsify the case of rape. Thus this Court disallows the argument put-forth by counsel for the appellant in the reference.

27. P.W. 4 Dr. Renuka Prasanna says in para No. 4 that it did not appear that aforesaid scratches of thighs of prosecutrix are caused by other object. She was not agreed that aforesaid injuries were self inflicted. She further says in para No. 7 that she was not agreed that when during the menstrual cycle any woman to satisfy her nymphomaniac desire penetrates some article, then aforesaid injuries may be caused.

28. Ex.P.1 has been lodged on very day at about 19.00 hours. Ex. P.1 reveals that appellant had entered in the house of prosecutrix, closed doors, he pressed her mouth, removed her clothes and committed sexual intercourse with her, threatened her to kill.

29. In the matter of **State of H.P. -v- Shree Kant Shekari** [2004(8) SCC 153], Hon'ble Supreme Court has held in para 18 as under :-

“18. The unusual circumstances satisfactorily explained the delay

in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle. These aspects were highlighted in *Tulshidas Kanolkar v. State of Goa* [(2003) 8 SCC 590 : 2004 SCC (Cri) 44] .”

30. The relevant portion of para-13 of **Puran Chand -v- State of H.P.** [(2014) 5 SCC 689] wherein the Hon'ble Supreme Court has made some observation is quoted below :-

“13.The delay in lodging the FIR has been clearly explained by the prosecution relating the circumstance and the witnesses supporting the same have stood the test of scrutiny of the cross-examination as a result of which the version of the victim girl cannot be doubted. The delay in lodging the FIR thus stands fully explained.”

31. In Ex.P.1 it has been mentioned that when her parents returned back then she went to lodge the report. P.W.1 prosecutrix says in para No. 1 that her parents had returned back in the evening. P.W.2 Shaknar says in para No. 2 that he and his wife returned back in the evening. P.W.3 Bitan Bai says in para No. 1 of her statement given on oath that they had returned back in the evening. There is no such evidence on record on strength of which it can be said that such explanation is not simple, not natural, not normal. Moreover, in the Indian society it is very natural conduct that normally a report of alleged rape is lodged after

consultation with the head of the family because honour and reputation of the family are involved in such a matter. If head of the family is not present then other family members wait for him. In these circumstances this Court finds that delay of few hours in lodging Ex.P.1 is satisfactorily explained and convincing. Thus looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Shree Kant Shekari** (supra), **Puran Chand** (supra) and **Munna** (supra) this Court finds that delay of few hours in lodging Ex. P.1 is not fatal to the prosecution case.

32. There is no such material available on record on strength of which it can be said Ex. P.1 is fabricated or concocted to falsely implicate the appellant in alleged offences.

33. P.W.1 prosecutrix says in para No. 10 that there is no cordial relation between appellant and her father.

34. In the matter of **State of H.P. -v- Shree Kant Shekari** (supra) the Hon'ble Supreme Court has dealt with the false implication, the relevant portion of para 22 reads as under :-

“22. In any event no girl of a tender age and her parents would like to jeopardise her entire future by falsely implicating a person alleging forcible sexual intercourse”.

35. In the matter of **Balwant Singh Vs State of Punjab** [(1987) 2 SCC 27] Hon'ble Supreme Court has laid down the following judicial precedent-

“Defence case that the father of prosecutrix falsely implicated the accused persons on the ground of litigation and enmity cannot be accepted as it is absurd that on account of litigation father of prosecutrix would falsely involve his daughter in case of rape by the appellant”.

36. There is no such material available on record on strength of which it can be said that there was no cordial relation between father of the prosecutrix and appellant, thus without happening any incident, P.W.1 prosecutrix had made aforesaid statement of para No. 2. In these circumstances and looking to the aforesaid judicial precedents laid down by the Hon'ble Supreme Court in the matter of **Shree Kant Shekari** (supra) and **Balwant Singh** (supra) this Court finds that it is absurd that on account of non-cordial relation prosecutrix and his family

would stake their reputation and honour and falsely implicate the appellant.

37. There is no such evidence on record on strength of which it can be said that aforesaid statements of para No. 2 of prosecutrix, P.W.2 Shankar, para No. 1 of P.W.3 Smt. Bitan Bai, are not simple, not natural and not normal.

38. In the case in hand FIR was not lodged with inordinate delay. Nobody had seen prosecutrix and appellant in compromising position. It has been earlier decided that prosecutrix was not consenting party. In the case in hand it is not the situation that she was taken from so many places and kept in various houses for considerable period. Thus appellant does not get any help from the aforesaid judicial precedent laid down by the co-ordinate Bench of this Court in the matter of **Natwar Dewangan** (supra), aforesaid judicial precedents laid down by the Hon'ble Supreme Court in the matter of **Lekhram** (supra) and **Mohammad Ali @ Guddu** (supra).

39. Thus, on the basis of aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Radhu** (supra), **Mohd. Ali** (supra), **Raju and others** (supra) and **Munna** (supra), this Court finds that this Court can act upon aforesaid sole testimony of para 2 of P.W. 1 Prosecutrix.

40. In the case in hand, the aforesaid statement of para 2 of P.W.1 prosecutrix gets corroboration from the aforesaid statements of para 2 of P.W.-2 Shankar, para 1 of P.W.3 Bitan Bai, Ex. P.1, Ex. P.4.

41. After the appreciation of the evidence discussed herebefore, this Court believes on para 2 of P.W. 1 prosecutrix, P.W. 2 Shankar, para 1 & 2 of P.W.3 Bitan Bai and disbelieves aforesaid statements of para 2 of D.W. 1 Sukhram, para 1 of D.W.2 Bhuwan Lal Patel, D.W.3 Hemant Das and D.W.4 Bhagbali in the reference that appellant had not committed any offence.

42. After the appreciation of the evidence discussed herebefore this Court finds that prosecution has succeeded to prove beyond reasonable doubt that appellant had committed house trespass in order to commit rape with prosecutrix which is punishable with imprisonment for life, and committed rape with her and threatened her to kill which are punishable under Section 450, 376, 506 of the IPC respectively. Thus,

this Court affirms the judgment of conviction passed by the trial Court.

43. As regards sentences awarded to the appellant for offence punishable under Sections 450, 376 and 506 of the IPC, considering the facts and circumstances of the case, they appear to be just and proper, and do not call for any interference. Hence, this Court also affirms the sentences regarding Sections 450, 376 and 506 of IPC awarded by the trial Court.

44. The appeal being devoid of merit deserves to be and is hereby dismissed.

45. The appellant is reported to be on bail. His bail and bonds are cancelled. He is directed to surrender immediately before the trial Court for undergoing the remaining part of jail sentences, if any. The trial Court is also directed to take the appellant in custody immediately for undergoing the remaining part of jail sentences, if any.

Sd/-
(Sharad Kumar Gupta)
Judge